

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties, the Appeals Board finds:

- (1) Claimant did give timely notice as required by K.S.A. 44-520.

The Appeals Board previously decided this issue on appeal from a preliminary hearing order and the only additional evidence presented after that preliminary hearing was additional testimony from the claimant. After reviewing the record, the additional testimony given by the claimant does not convince the Appeals Board to change its earlier ruling.

Claimant injured his right leg on approximately November 8 and 9, 1993. As a result of the injury he developed a deep venous thrombosis. Claimant's last day worked was November 12, 1993. Claimant called in the next day and told the assistant supervisor, Jim Shahan, that his leg was bothering him and that he banged it out there. On November 14, 1993, claimant notified the night supervisor that he was quitting because he had banged his leg and was tired of standing on his feet. Prior to this injury he had advised respondent's supervisor that he was banging into things at work. Although respondent presented evidence tending to discredit claimant's testimony, the Appeals Board finds, as it did at the time of the preliminary hearing, the evidence establishes more probably than not that claimant did give notice as required.

- (2) The Appeals Board finds that claimant sustained a 10 percent permanent partial impairment of function to his right lower extremity.

Because of his ruling on the notice issue, the Administrative Law Judge did not make a finding on the nature and extent of disability. The respondent suggests that the case should be remanded. In this case, however, there is only one medical opinion regarding the nature and the percentage of the functional impairment. The opinion stated by Dr. Schlachter was that claimant sustained a 10 percent permanent partial impairment of his right lower extremity. The Appeals Board, therefore, finds claimant's injury resulted in a 10 percent permanent partial impairment of function to the right lower extremity and awards benefits on that basis.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge John D. Clark dated February 5, 1996, should be, and the same is hereby, reversed. The Appeals Board hereby enters an award in favor of the claimant, Steven D. Greenwood, and against the respondent, Pawnee Extrusions, Inc., and its insurance carrier, Alexis Risk Management Service, as follows:

AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Steven D. Greenwood, and against the respondent, Pawnee Extrusions, Inc., and its insurance carrier, Alexis Risk Management Service, for an accidental injury which occurred November 8 and 9, 1993, and based upon an average weekly wage of \$297.82, for 14.71 weeks of temporary total disability compensation at the rate of \$198.56 per week or \$2,920.82, followed by 18.53 weeks at the rate of \$198.56 per week or \$3,679.32 for a 10% permanent partial disability to the right lower extremity, making a total award of \$6,600.14 which is presently due and owing in one lump sum less amounts previously paid.

The Appeals Board adopts the orders by the Administrative Law Judge relating to fees and expenses.

IT IS SO ORDERED.

Dated this ____ day of August 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert R. Lee, Wichita, KS
 Scott J. Mann, Hutchinson, KS
 John D. Clark, Administrative Law Judge
 Philip S. Harness, Director